

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN - SOUTHERN DIVISION**

PROFESSOR LAURA BENY,

Plaintiff,

vs.

Case No. 2:22-cv-12021-DML-EAS

Hon. David M. Lawson

Magistrate Judge Elizabeth A. Stafford

UNIVERSITY OF MICHIGAN
BOARD OF REGENTS, and
DEAN OF UNIVERSITY OF
MICHIGAN LAW SCHOOL
MARK D. WEST, (In His
Individual/Personal Capacity),

Defendants.

**PLAINTIFF'S CROSS-MOTION
REQUESTING THE COURT ENTER
AN ORDER PERMITTING
PLAINTIFF'S RELIANCE ON
EXPERT REPORTS FILED AFTER
JULY 7, 2023, BUT BEFORE
AUGUST 21, 2023**

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**PLAINTIFF’S CROSS-MOTION REQUESTING THE COURT
ENTER AN ORDER PERMITTING PLAINTIFF’S RELIANCE
ON EXPERT REPORTS FILED AFTER JULY 7, 2023,
BUT BEFORE AUGUST 21, 2023**

NOW COMES Plaintiff, PROFESSOR LAURA BENY, by and through her attorneys, Edwards & Jennings, P.C., and for her Cross-Motion Requesting the Court Enter an Order Permitting Plaintiff’s Reliance on Expert Reports Filed After July 7, 2023, but Before August 21, 2023, states as follows:

1. This is a civil rights case, under the Civil Rights Act of 1964, Title VII and the Michigan Elliott-Larsen Civil Rights Act, involving Plaintiff Professor Laura Beny, an African American female, against Defendant University of Michigan Board of Regents and Dean Mark West. This case was filed on August 26, 2022. The trial date is June 11, 2024.

2. On July 7, 2023, pursuant to the Scheduling Order entered on March 2, 2023, the Plaintiff’s Expert Disclosures were due. Plaintiff filed Plaintiff’s “Expert Disclosures,” identifying each expert with a summary of each of the expert’s testimony, and each of their Curriculum Vitae.

3. On August 19 and 20, 2023, the Defendants were served with Plaintiff’s expert reports for Richard Painter, JD; Barry Grant, CPA; and Noelle Clark, Ph.D. (**Ex. 1**, Emails serving reports from Plaintiff’s attorney to Defendants’ attorneys.)

4. On July 7, 2023, the date Plaintiff's Expert Witness Disclosures were due, the Court had not yet decided, Defendants' "Motion to Dismiss [Plaintiff's] Amended Complaint and to Stay Discovery" filed by Defendants on February 6, 2023. (ECF No. 37.)

5. For the reasons stated in Plaintiff's Response and Brief in Opposition to Defendants' Motion to Prohibit Plaintiff's Reliance on Experts, Plaintiff requests an Order allowing Plaintiff to rely on expert reports filed after July 7, 2023, but before August 21, 2023. (Ex. 2, ECF No. 76, without exhibits.)

6. On August 24, 2023, pursuant to Local Court Rule 7.1, a "Meet and Confer" was held seeking concurrence in this instant Motion, "Plaintiff's Cross-Motion Requesting The Court Enter An Order Permitting Plaintiff's Reliance on Expert Reports Filed After July 7, 2023, But Before August 21, 2023."

7. On August 24, 2023, during the "Meet and Confer", Plaintiff proposed a Joint Stipulation for Defendants to concur in Plaintiff's Cross-Motion; with Defendants allowed to file supplemental reports of Defendants' experts, and to file an initial report for Defendants' Ethics Expert. In Defendants' Expert Disclosures the Ethics Expert did not produce a report. Defendants rejected the proposed Joint Stipulation. (Ex. 3, Defendants' Expert Disclosures of August 4, 2023.)

8. Fed. R. Civ. P. 37(c)(1) allows for the Court to craft a remedy where an expert report is not submitted on the date it is due if the party can show the failure was “substantially justified or is harmless”.

9. Plaintiff’s delayed reports were “substantially justified and harmless” under Fed. R. Civ. P. 37(c). (See **Ex. 2**, Brief, pp. 7-11.)

WHEREFORE, Plaintiff requests this Court enter an Order Permitting Plaintiff’s Reliance on Expert Reports filed after July 7, 2023, but before August 21, 2023; and further to allow Defendants to file supplemental and/or rebuttal reports, if require to do so.

Respectfully submitted,

EDWARDS & JENNINGS, P.C.

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Dated: August 30, 2023

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**BRIEF IN SUPPORT OF PLAINTIFF'S CROSS-MOTION REQUESTING
THE COURT ENTER AN ORDER PERMITTING PLAINTIFF'S
RELIANCE ON EXPERT REPORTS FILED AFTER JULY 7, 2023,
BUT BEFORE AUGUST 21, 2023**

STATEMENT OF ISSUES PRESENTED

1. SHOULD THE COURT ENTER AN ORDER THAT ALLOWS PLAINTIFF BENY TO FILE EXPERT REPORTS AFTER THE JULY 7, 2023 EXPERT DISCLOSURE DATE WHERE DISCLOSURES WERE MADE ON JULY 7, 2023 BUT EXPERTS REPORTS WERE NOT SUBMITTED TO DEFENDANTS UNTIL AUGUST 19 AND 20, 2023?

Defendants answer: No

Plaintiff answers: Yes

This Court should answer: Yes

I. STATEMENT OF FACTS

Plaintiff filed reports for three (3) experts on August 19, and 20, 2023. (**Ex. 1**, Three (3) Emails serving expert reports to Defendants.)

Plaintiff Beny relies upon the Statement of Facts in Plaintiff's Response In Opposition to Defendants' Motion to Prohibit Plaintiff's Reliance on Experts. (**Ex. 2**, pp. 1 to 7.)

II. ARGUMENT

Plaintiff Beny relies upon the Legal Analysis/Argument submitted in Plaintiff's Response In Opposition to Defendants' Motion to Prohibit Plaintiff's Reliance on Experts. (**Ex. 2**, pp. 7 to 18.)

III. CONCLUSION

Plaintiff requests this Court grant Plaintiff's Cross-Motion Requesting The Court Enter An Order Permitting Plaintiff's Reliance On Expert Reports Filed After July 7, 2023, But Before August 21, 2023 and enter an Order Permitting Plaintiff's Reliance on Expert Reports filed after July 7, 2023, but before August 21, 2023.

Further, that the Defendants be allowed to take supplemental and/or rebuttal

reports if required.

Respectfully submitted,

EDWARDS & JENNINGS, P.C.

By: /s/ Alice B. Jennings

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Dated: August 30, 2023

CERTIFICATE OF SERVICE

I hereby certify that on August 30, 2023, I caused the foregoing document to be filed with the Clerk of the Court, via the Court's electronic filing system, CM/ECF, which constitutes as service upon all counsel of record.

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